1946. File No. A-Security Measures/46

Legal Deptt

A BRANCH

Subject:— Opinions under the Bombay Security Measures Ordinance 1946

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(A) Security Measures/46

File No.

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494-A

C O N T E N T S.

Legal Department File No.O.Securities/46

Sr.No.	Compilation No.	Subject.	Pages.
		Opinions under the Indian Securities Act,1920.	
1	O.No.731/ 28-1-46.	Secs. 10(3) and 2h. Re: Loss of Govt. Promissory Notes of the 3% B'bay Govt. Loan notes in transit through Post question regarding issue of duplicate notes as in the case of the Central Govt. securities Rules 13 of the B'bay Govt. Securities Rules 1938 and the Indian Govt. Securities Rules, 1925. Question, who is empowered to issue duplicates in respect of B'bay Govt. Promissory Notes.	3-5.

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Office of the R.L.A.

The main question for the consideration of the R.L.A. is how the portion of fine may be recovered as fine under sub-section (6) of section 4 of the Bombay Security Measures Ordinance II of 1946.

Sub-section (6) of section 4 of the Bombay Security Measures Ordinance II of 1946 provides:

> "The portion of fine payable by any person including a Hindu Undivided family may be recovered as a fine or as arrears of land revenue".

This provision is in terms similar to sub-section (4) of section 3 of the Collective Fines Ordinance XX of 1942 of the Government of India as it stood before it was amended by Ordinance No.IXIII of 1942. In construing that provision the Advocate General in his opinion dated 24th October 1942 opined:

> "The question is whether the rules made under section 386(2) of the Criminal Procedure Code apply to the recovery of fines imposed under the Collective Fines Ordinance, 1942. Section 25 of the General Clauses Act making the provisions of the Code of Criminal Procedure relating to the issue and execution of warrants for the levy of fines applicable to all fines imposed under any Act, regulation, rule or by-law would apparently cover the case of a fine levied under the Collective Fines Ordinace of 1942. The difficulty and doubt on the point are caused by the fact that section 386 states that it is the court passing the sentence that may take action for the recovery of the fine in the ways specified. It cannot be said that as regards the fine levied under the Ordinance, there is any court which has levied the fine and that therefore there is no court which can take action for the recovery of the fine. I do not think that the District Magistrate, who apportions the fine, can be said to be the court, which has levied the fine I am of the opinion that the doubt is of such a nature as to render it inadvisable to proceed for the recovery of the fine under section 386 of the Criminal Procedure Code. The alternative is either to proceed to recover the fine as arrears of land revenue or to amend the Ordinance. On the whole it is advisable to amend the Ordinance."

When the legal position as expounded by the Advocate General was brought to the notice of the Government of India, they amended sub-section (4) of section 3 by Ordinance LXIII of 1942 as follows:-

"The portion of such fine payable by any person (including a Hindu Undivided family) may be recovered —

(a) in the manner provided by the Code of Criminal Procedure, 1898, for the recovery of fines imposed by a court, as if such portion were a fine imposed by the District Magistrate acting as a court:

Provided that the Provincial Government may, in lieu of the rules referred to in sub-section (2) of section 386 of the Code of Criminal Procedure, 1898, make rules under this Ordinance regulating the manner in which warrants under clause (a) of sub-section (1) of the said section of the said Code are to be executed, and for the summary determination of any claims made by any person other than the person liable to pay the fines in respect of any property attached in execution of the warrant; or

(2) as arrears of land revenue."

It appears therefore that sub-section (6) of section 4 of the Bombay Security Measures Ordinance II of 1966 requires to be amended on the lines of sub-section (4) of section 3 of the Ordinance XX of 1942 as amended by Ordinance LXIII of 1942, since otherwise it would be difficult to recover the apportioned portion of fine as fine. The

R.L.A. in his opinion No. 8377, dated 23rd November 1946 had already advised Government accordingly. On such amendment the difficulties pointed out by the Chief Police Prosecutor in his note at page 1 ante can be easily overcome by making provisions for the purposes in the rules under the Ordinance.

Sd/-

Remembrancer of Legal Affairs.

U.R.to H.D.,No.318-Confl., dated the 18th December 1946

MMB.
11.7.